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In re Application of :  
Jacotot, et. al. :  
Serial No.: 10/573,576 : DECISION ON  
PCT No.: PCT/FR2004/002422 : PETITION  
Int. Filing Date: 24 September 2004 : UNDER 37 CFR 1.137(b)  
Priority Date: 25 September 2003 :  
Attorney's Docket No.: BJS-1721-112 :  
For: PEPTIDES HAVING, FOR EXAMPLE, AN :  
ANTIANGIOGENIC ACTIVITY AND :  
APPLICATIONS THEREOF IN :  
THERAPEUTICS :

This decision is responsive to the "PETITION TO WITHDRAW HOLDING OF ABANDONMENT UNDER 37 CFR 1.181(a) AND MPEP § 711.03(c)(I)(A.)," filed 19 November 2007.

**BACKGROUND**

On 24 September 2004, applicants filed international application PCT/FR2004/002422, that claimed priority of an earlier French application which was filed 25 September 2003. Accordingly, the thirty-month period for filing a continuation application in the United States expired at midnight on 25 March 2006.

On 24 March 2006, applicants filed a transmittal letter for entry into the national stage in the United States. The transmittal letter was accompanied by, *inter alia*, a preliminary amendment, and the basic national fee. These papers were assigned U.S. Serial No. 10/573,576.

On 25 September 2006, the United States Patent and Trademark Office (USPTO) in its capacity as an Elected Office mailed out a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905) that indicated that applicant was required to file a translation, the CRF for the sequence listing, a statement indicating that the paper sequence listing and the CRF are identical, and an amendment directing entry of the sequence listing. The notice set a response period of two (2) months.

On 02 November 2006, applicant provided the translation and the amendment requesting entry of the sequence listing, the statement and the CRF.

On 14 June 2007, the USPTO mailed an error report for the sequence listing, along with a "NOTIFICATION OF DEFECTIVE RESPONSE" (Form PCT/DO/EO/916).

On 16 July 2007, applicant filed a new sequence listing.

On the 26 July 2007, an error report was generated for the sequence listing submitted 06 July 2007.

On 19 September 2007, a "NOTIFICATION OF ABANDONMENT" (Form PCT/DO/EO/909) was mailed to applicant indicating that applicant failed to respond to the "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905) mailed 25 September 2006.

On 19 November 2007, applicant filed the current petition indicating, *inter alia*, that the error report generated 26 July 2007 was not mailed to applicant so the abandonment was unavoidable. In the alternative, applicant stated that this petition could be construed as a petition to revive unintentional. This submission was accompanied by another sequence listing.

On 28 February 2008, the sequence listing, filed 19 November 2007, was accepted.

On 10 April 2008, a "NOTICE OF ACCEPTANCE OF APPLICATION UNDER 35 U.S.C. 371 AND 37 CFR 1.495" (Form PCT/DO/EO/903), and a "WITHDRAWAL OF PREVIOUSLY SENT NOTICE" (Form PTO-327) were mailed to applicant.

### **DISCUSSION**

A petition under 37 CFR 1.137(b) requesting that the application be revived on the grounds of unintentional delay must be filed promptly after the applicant becomes aware of the abandonment and such petition must be accompanied (1) by a statement that the “entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional,” (2) by a proper reply, (3) by the petition fee required by law (37 CFR 1.17(m)), and (4) if the international filing date of the application is before June 8, 1995, any petition to revive under 37 CFR 1.137(b) must be accompanied by a terminal disclaimer and small entity fee of \$55.

Applicant filed the required statement, a sequence listing in compliance which constituted a proper response to “NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)” (Form PCT/DO/EO/905) and the proper petition fee.

Applicants argue that ...”the present application became abandoned due to the failure of the Patent Office to notify the applicants of the deficiency of the Sequence Listing filed July 16, 2007...” It should be noted that applicants did not file a proper response to the “NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)” (Form PCT/DO/EO/905), mailed 25 September 2006, in that the sequence listing was defective. Therefore, a “NOTIFICATION OF DEFECTIVE RESPONSE” (Form PCT/DO/EO/916) was mailed on 14 June 2007, along with an error response indicating that the sequence listing was still not in compliance (confirmed on page 3 of applicants’ arguments). In response to this Notification, applicant filed a third sequence listing on 16 July 2007. This sequence listing still was not in compliance. Therefore, applicant failed to properly respond to the “NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)” (Form PCT/DO/EO/905), and the application was abandoned. Applicant was not entitled to any further response time, or a further opportunity to fix the defect. The error report of 26 July 2007 should have been mailed with the “NOTIFICATION OF ABANDONMENT” (Form PCT/DO/EO/909), as a courtesy to applicant. Therefore, the application was properly abandoned.

With respect to applicants’ arguments regarding the amino acid “Xaa,” applicants attention is drawn to 37 CFR 1.823(b) which requires applicant to provide specific information in identifier 223 when “Xaa” is used in a sequence. Applicant did not provide the required information.

**CONCLUSION**

For the above reasons, the "WITHDRAWAL OF PREVIOUSLY SENT NOTICE" (Form PTO-327), mailed 10 April 2008, is hereby **VACATED**.

The petition under 37 CFR 1.137(b) is **GRANTED** without prejudice.

Applicants' deposit account # **14-1140** will be **charged** the petition fee of **\$1500**.

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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